

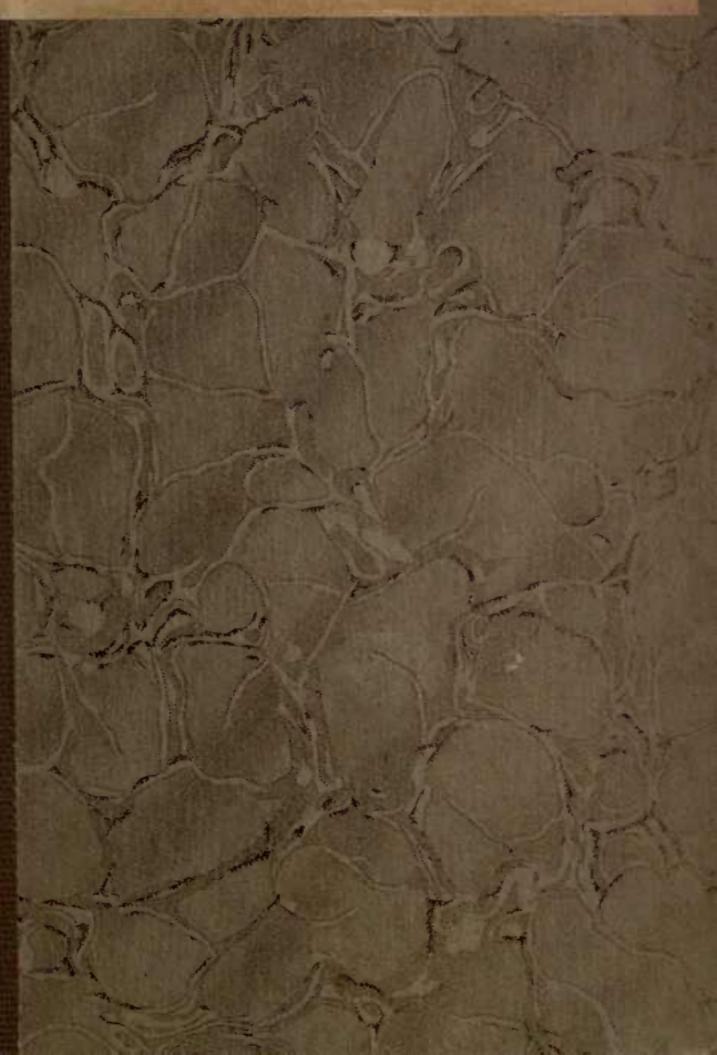
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A Short View of the Laws  
Now Subsisting with Respect  
to the Powers of the East In-  
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S H O R T V I E W  
O F T H E  
L A W S  
Now subsisting with Respect to the Powers of the  
EAST INDIA COMPANY

To borrow Money under their Seal, and to incur Debts in the Course of their Trade, by the Purchase of Goods on Credit, and by freighting Ships or other Mercantile Transactions.



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L O N D O N:  
Printed for W. NICOLL, in St. Paul's Church-Yard.  
M DCCLXVII.

## ШЕДЕВРЫ ТЯЖОНД

J U T T O

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# **EAST INDIA COMPANY**

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## A short View, &c.

**A**S many erroneous opinions have been industriously propagated with respect to the powers of the East India Company to contract debts, I think it a duty to the Company and to the public, to give a fair state of the laws now subsisting with respect to these matters, by which the prejudiced may be set to rights, the ignorant informed, and the malevolent deceivers of the public exposed and detected.

OCT 10 1940  
*gambier*  
By act 9 and 10 William III. c. 44. § 75: the Company is allowed to borrow on the credit of the two millions lent to Government, but is restrained from borrowing any greater sums than shall be employed in their trade, without, however, any restriction as to the amount of such borrowing, only such borrowing must be under common seal.

By § 86 of the same statute, the Company is directed to take care that the sum total of its debts do not exceed the amount of its funds and effects, and if they shall reduce their funds and effects by dividends, so as not to leave sufficient to answer their debts, the persons who receive

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the dividends are each made answerable to pay the debts, to the amount of the dividend respectively received.

By act 9 Ann, c. 17. § 2. The Company having lent to the public 1,200,000*l.* more, they are allowed to borrow under their common seal, to the amount of 1,500,000*l.* above what they might lawfully borrow by the preceding act.

By act 7 Geo. I. c. 5, § 32, the Company is allowed to borrow under their common seal for carrying on their trade or lending on bottomry, to the amount of the sum due from the publick, or five millions.

By act 17 Geo. II. c. 17. § 8. the company having advanced one million more to government, the power of borrowing under their common seal, is extended to one million above what they might borrow before that act.

In consequence of these acts, the Company has always considered itself entitled to borrow to the amount of six millions under its common seal.

By act 23 Geo. II. c. 22. § 5 and 6. the Company was authorized to convert part of its bond debts into annuities, to the amount of 4,200,000*l.* but it is declared that its power of borrowing granted by former acts should continue in force, but that the amount of the annuity should be computed as part of what they were empowered to borrow.

In consequence of this last act, the Company did convert 2,992,440*l.* or near *three millions* of their bonds into annuities, and they owe besides, by bonds under their common seal, 2,898,124*l.* so that the total amount of their bonds and annuities is 5,890,564*l.* which is 109,436*l.* under the six millions which they are entitled to borrow by bonds and annuities.

In the course of the Company's trade, they have been in the practice, like all other merchants, of purchasing goods upon credit, and of contracting for ships upon freight, and only advancing a part of that freight 'till after the voyage was compleated. It was impossible for them to carry on their trade in a proper manner in any other way, for if they had paid ready money for all their goods, and advanced the whole freights, they would have been exposed to imposition in the quality of the goods, and to misconduct in the freighters of the ships, without retaining in their hands a proper sum to repay such damage as the Company might suffer by the hands of the freighters or merchants.

It never therefore was supposed that the Company transgressed the statutes which restrained their power of borrowing under their seal to six millions, by carrying on their trade in the way of purchasing goods on credit; and indeed if this had been meant, the law would and ought to have allowed them a more extensive power of borrowing; for it is certain the Company's fortifications in India have cost more than *three millions*, and the nature of their trade

in India requires that they should always have to the value of at least *three millions*, in goods and cash, or what is called quick stock, employed in India for making their investments, (including the cargoes afloat going out and coming home) so that here is the whole sum which they are allowed to borrow, disposed of in India, besides the value of the goods which they must always have in their warehouses at home, to the amount of more than *two millions*.

If it had been therefore the intention of the Legislature to restrain the Company from purchasing goods on credit, or from incurring freights or other such debts, and that their whole debts of every kind should not exceed six millions, it is very plain to those who are versant in mercantile transactions, and who know the state of this company's trade, that they could not have carried on their affairs in such a manner as they have done, nor have rendered the trade of India so great an object as it is, to this commercial kingdom.

It has sometimes happened to this Company, as it frequently happens to other merchants, that its returns have not arrived at the time expected, and that their investments during some particular years have fallen short; in such cases they have not been able to pay, with the strictest punctuality, the price of the goods bought on credit, nor the freights due for shipping or other articles of the same kind; and in such cases the furnishers of these goods or ships have indulged the Company with a delay of payment; and in  
order

order to indemnify themselves for that delay, these creditors have either taken a higher price for their next goods, or sometimes have been allowed interest from the Company, but in no instance have these debts, so contracted, been converted into debts under the Company's seal, nor were ever considered as money borrowed.

The purpose of restraining the Company as to their power of borrowing under their common seal, was merely to prevent their interfering in the market with government loans, exactly upon the same principle that private lotteries, &c. are prohibited by law; but in all other respects the Company is unlimited, as every private merchant is, as to the exercise it may chuse to make of its credit in the purchase of goods, or incurring debts in any other mode except coming into the market to borrow under their seal, by which alone the Company can interfere with the loans required by Government for the purposes of the state.

So long as the Company carries on its trade with advantage to itself and the nation, and preserves entire, an ample sufficiency of funds to pay all its debts, and repay its capital, there can be no reason in common sense for preventing its employing its credit in the purchase of as great a quantity as possible of our own commodities to send to India, and employing as great a number of shipping as the trade will possibly allow.

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The Company's trade is so much extended of late years beyond its former limits, that its power of borrowing on annuities and bonds ought also to have been increased; for if six millions was thought reasonable forty or fifty years ago, the publick ought now by the same parity of reason to allow at least eight or ten millions to be borrowed under seal, especially as the wealth of the nation, and of consequence the market for borrowing has so greatly increased during that period. The expensive wars which the Company carried on for many years, obliged them, for want of cash, or a power of borrowing, to diminish both their exports and imports to the great prejudice of the nation; so that the kingdom in general has no reason to applaud the wisdom of that law which restrained the Company to six millions. Besides, we have of late years extended our China trade beyond any thing that was ever attempted in former times, insomuch that above *three millions* sterling is now invested in teas alone. It is impossible that we could either have carried on these wars which have ended with so much success, or have extended our commerce and the exportation of home commodities to the amazing degree we have done, if the statutes restricting our borrowing under seal had been understood to prohibit the using our credit in the purchase of goods.

The debts due by the Company at present, exclusive of its bonds and annuities, are particularly set forth in an account delivered in by order of the House of Commons, the particulars of which debts are these:

For

For customs on goods sold and unsold, now in England, - - £ 1,200,605

The customs are not payable till the goods are sold, and even as to those sold, a long delay of payment is always allowed. The arrear of customs on goods sold, is at present about 300,000 £ or 400,000 £ to our debtors, ~~including~~

To what owing for silver and other current sundries, with interest thereon, - - £ 581,750

The greatest part of this debt is due to the bank of England, as the price of silver bought from the bank for exportation, several years ago. The Company never granted any security under their seal for this debt, more than for the price of other goods bought on credit; and this debt stands at this day upon the footing of a simple entry in the Company's books, and in the books of the Bank, as a sum due for the price of silver, and the Bank have willingly accepted interest at 4 per cent. and have indulged the Company with a delay of payment.

To the amount of bills of exchange drawn from India, unpaid, with interest, - - £ 338,000

To freight and demurage, - - £ 305,000

To tradesmen's bills in the department of the committee of shipping, or £ 155,900

To

To ditto, in the committee of buying,	£.	64,079
To dividends on stock not yet demanded,	£.	23,883
To dividend on stock, due at Mid-summer, at the rate of 10 per cent.	£.	1859,704
To interest on annuities to Mid-summer, including interest not yet demanded,	£.	75,406
To interest on bonds to Midsummer, including interest not yet demanded,	£.	60,553
To commission due to supercargoes.	£.	30,000
To the proprietors of goods sold in private trade,	£.	75,900
To warrants passed the court unpaid,	£.	7,500
To alms-house at Poplar,	£.	13,503
To salaries of clerks, &c. and for tradesmens bills for work done to the house, &c.	£.	5000
To ballance to government for naval and garrison stores received in India, 9,223 £. but as go- vernment	£.	

vernment owes to our company 33,750*l.* as the price of salt-petre, this ought not to be stated.

These are the whole debts stated by the Directors themselves as due by this Company, besides their bonds and annuities, a great part of them are not payable in the common course of business for a considerable time, some of them not till the year 1769, and the Company are possessed of effects now in England, independent of the cargoes of this year daily expected, sufficient to pay them all; but at any rate none of these debts fall within the prohibition of the statutes by which the Company is restrained from borrowing under their common seal to a greater amount than six millions, for none of these debts have been borrowed under the common seal, nor indeed have been borrowed at all in the sense meant by the act of parliament, but are merely book debts contracted as the price of goods, &c. in the common course of merchandise.

It further appears by a calculation made by one of the Directors themselves, a member of the committee of treasury, that by the sale of goods in the common course of the Company's sales, the Company will be in cash, to pay off all these debts and also to pay the dividend of 6*½* per cent. against the month of February 1768. A copy of this account is annexed.

But whatever may be in that matter, it is sufficient for the present argument, to shew that none of the debts due by the Company, over and above their bonds, fall within the prohibition

tion of the statutes which have restrained the Company's power of borrowing under seal; none of the Company's creditors have complained of the late increase of dividend, the Directors alone and their faction have objected to it, and have pretended as their excuse that they deemed it illegal to make any increase of dividend while the Company owed any debts beyond the six millions in bonds and annuities. They have not urged the argument as a matter of inexpediency merely, for that argument would have appeared too groundless when the payment of all these creditors must in every way take place almost immediately, but they have put the argument on an objection of illegality, founded upon the statutes which restrain the Company's power of borrowing; and indeed if the objection of the Directors had arose from inexpediency alone, they could not have been justified in making so violent and obstinate an opposition to the sentiments of the Proprietors, nor could they be justified as honest men in endeavouring to shake the very foundation of the Company's credit, and to injure its stock, in order merely to save the Company from paying a sum of 40,000*l.* more or less, in Februaty next. But indeed upon the footing of the Directors argument that the Company can never divide if they have other debts besides their bonds and annuities, no dividend can ever take place, for the Company cannot carry on their trade in a proper manner without contracting such debts as the price of goods purchased on credit, and the freights of ships employed by them.

It is proper therefore, after having premised this general view of the statutes which restrain the Company's power of borrowing, to consider these statutes more particularly one by one, to see if we can discover any pretence for that doubt which the Directors have affected to entertain concerning the Company's power of borrowing.

It is extremely remarkable, that when the Directors were asked in the general court whether they had taken any opinions of council to justify their pretended doubt as to the Company's power of contracting such debts, they declared that they had not, and the chairman said, he did not think they would have been justified if they had taken such opinions. Nothing can shew more clearly the unjustifiable motives of the Directors opposition than this answer: they opposed the dividend upon pretence of a doubt of the Company's power of incurring debts beyond six millions, and yet they did not take the opinion of council concerning the Company's real powers. They knew that no opinion could be procured to give a foundation for the doubt which they pretended to entertain, and therefore they took no opinions, but made use of their pretended doubt as a mask to cover the real motives which induced them to engage in their conspiracy against the interest of the proprietors whose servants they are.

The act 9 and 10 of king William, c. 44. contains no clauses which can any way restrain the Company's power of borrowing or extending

its trade, except what is to be found in section 61, 62, 64, 75 and 86.—By sections 61, 62 and 64, there is no other restriction except that the Company shall not, *in any one year*, successively, send or cause to be sent to the East Indies from England or any other country, goods, bullion, or commodities, to any greater value than their principal stock subscribed. And the fact is, that the Company never has sent *in any one year*, goods, bullion or commodities to the value of one-third of their principal stock, and therefore no argument can be founded on the limitations contained in these three clauses.

The section 75 of this statute, begins with a recital of the act 8 and 9 of king William in favor of the Bank of England, *viz.* that no other Bank than the Bank of England shall be erected, permitted or allowed by act of parliament, and then the act proceeds, that for the better securing the privileges of the Bank of England, *It shall not be lawful* (in the record it is *shall and may be lawfull*) for any Company to be established by virtue of this act, to borrow or give security for any sum or sums of money on credit, on any publick funds hereby granted, and that it shall not be lawful for such Company to be established by virtue of this act, to borrow or give security for any greater sum or sums of money, than such as shall be really and *bona fide*, expended and laid out in and for the buying of goods, bullion or commodities, to be exported for the proper account of the said Company to be established, or shall be otherwise employed in their trade, all which sum or sums of money

so to be borrowed for the purpose aforesaid, shall be borrowed only on their common seal, and shall not be made payable or *bona fide*, agreed to be paid at any time less than six months from the time of borrowing thereof: and that it shall not be lawful for the Company to be established by this act, to discount any bills of exchange, or other bills or notes whatsoever, or to keep any books or cash for any persons whatsoever, other than only the proper monies and cash of the said Company.

The plain import of this clause is not to restrain the Company with respect to the extent of their trade, but merely to prevent its interfering with the business carried on by the Bank of England. The purchasing goods upon credit can never be considered as an interference of that kind.

The 86th section of this act does no way restrain the Company with respect to the amount of its debts, excepting only that the Company shall take care that the sum total of all the debts which they shall owe at any one time shall not exceed the value of *the principal or capital stock or stocks which at any such time shall be and remain to the said society undivided*; and that in case the Company, by any dividend whatsoever to be made amongst themselves, shall reduce or lessen their joint stock, principal or capital, without paying off or proportionably reducing the sum total of their debts, so that the value of the joint-stock, principal or capital undivided, shall not be sufficient to answer

surer their just debts then remaining unpaid. In every such case the particular members receiving such dividend shall be severally liable to the amount of the dividends received, to pay and satisfy the debts which shall remain due and unpaid by the Company.

The plain import of this clause of the act, is to secure the creditors of the Company from any injustice by the Company's dividing their effects so as not to leave a sufficiency for payment of its whole debts, and can never admit of the construction which has been attempted to be put upon it, as if the Company's debts could never exceed the sum of money subscribed to Government.— By the words principal or capital stock or stocks undivided, is plainly here to be understood the total funds and effects of the Company, which are in fact the capital upon which the Company does trade; and there would be the greatest absurdity in supposing, that in a case where the Company had in its warehouses goods and effects to the value of three times its debts, the debtors of the Company could have an action against the receivers of dividends, under pretence that the sum total of the Company's debts exceeded the sum total of the capital stock subscribed to Government, at a time when the Company's total goods and effects might, as at present, exceed its total debts, in such a proportion as not only to pay its whole debts, but also to repay its capital advanced, and leave five or six millions over of clear ballance to be divided amongst the proprietors.

But if the words, principal capital stock or stocks undivided, could in this clause admit of the construction which is put upon them, yet certainly the words *sum total of debts* can in that case be only understood to mean the ballance of debts after deducing the fair value of the Company's effects, other than its capital subscribed; and if the *debts* are understood in this sense, viz. as the ballance of debts, there would be no inconsistency, that when the sum total of the ballance of debts exceeds the capital stock subscribed, that the receivers of dividends should be respectively answerable to pay the debts in proportion to what they receive, but unless the words, principal or capital stock or stocks undivided, or the words, sum total of debts are to be understood in the sense here affixed to them, the statute can not be explained so as to be agreeable to common sense or reason.

By the act 6th Q. Ann. c. 17. § 2. it is provided, that for the better enabling the East India Company to raise and pay the sum of 1,200,000*l.* advanced to the publick, the common seal of the Company shall and may be made use of to borrow any sum or sums of money, from time to time, upon account of their united stock and funds, so as the sum total of all the principal monies which at any one time shall be owing upon the security of the said seal do not exceed 1,500,000*l.* over and above the monies which might lawfully be borrowed thereupon before the making of this present act.

If any obscurity had in fact existed upon the footing of the former acts, this clause of the act 6 Q. Ann is sufficient to clear it up, the Company are no way restrained by the plain words and meaning of this last clause, as to the other book debts which they may owe not under the common seal, because debts under the common seal are the only ones which could interfere either with the Bank of England or with Government loans.

By the act 7th of George I. c. 5. p. 32. it is enacted, that it shall and may be lawful for the East India Company to borrow or take up money upon any contracts, bonds, &c. under their common seal, for carrying on their trade, or for lending money, by way of bottomry, so as by the monies already borrowed by them, and by the monies which they shall hereafter borrow pursuant to this act, the whole sum which they shall owe at any one time do not exceed the sum due at that time from the public to the said Company, or the sum of *five millions* of pounds sterling in the whole.

The plain meaning of this clause is, that the Company shall not owe, *under their common seal*, at any one time, a greater sum than 5,000,000*l.* but it neither imports nor implies any restriction upon the Company with respect to the purchasing goods upon credit, or freights due to ships, or other book debts incurred in the common course of trade without borrowing.

A criticism has been made on this clause, as if the Company could not take the benefit of borrowing to the amount of five millions under this statute, because the first part of the statute recites a plan or scheme which had been formed for incorporating nine millions of the South Sea capital stock into the stock of the East India Company, which scheme never took effect, and therefore it has been argued that the power of borrowing given to the East India Company being a part of that scheme, must fall with it.

But the answer is very obvious: the power of borrowing given to the East India Company is not granted under any condition whatever, but is given in positive and direct words, to the amount of five millions—and the act does not proceed upon the intention to incorporate the nine millions of South Sea stock as a condition, but only recites that as a proposition, and gives leave to the several Companies to carry it into execution if they thought proper.

But if any doubt had remained concerning this power of the Company to borrow five millions, it is fully removed, not only by their having in practice explained the act in the most extensive manner, without challenge, but by the subsequent act 23 Geo. II. c. 22. § 5 and 6. which plainly proceeds upon the supposition, that the Company was at that time intitled to borrow to the amount of six millions, and allows them to convert 4,200,000*l.* as part of their bonds into annuities.

The 33d section of the same act is a repetition almost verbatim of the 75th section of the act 9 and 10th of king William, c. 44. by which, in order to prevent the Company from interfering with the Bank of England, they are allowed to borrow on the credit of their capital stock, provided the sum so borrowed shall be laid out in goods to be exported or otherwise employed in their trade, or lent on bottomry, and that such sums shall only be borrowed under their common seal, and shall not be payable on demand but at six months, and that they shall not discount bills or notes, or keep cash for other persons.—In this clause the words “*it shall not be lawful,*” in place of “*it shall and may be lawful,*” are erroneously copied from the printed clause 75th of the act 9 and 10th of William, c. 44.

The act 17th Geo. II. c. 17. § 8. gives the Company simply a power in order to raise the sum of one million paid by them to Government, of borrowing *under their common seal* to the amount of one million more than they could before lawfully borrow.

This seems to be a compleat view of the whole subsisting statutes by which the East India Company is restrained from borrowing money; and it must appear evident, that by none of them the Company is prohibited from purchasing goods upon credit, or incurring book debts, and therefore the great clamour which has been raised, as if the Company had acted contrary to law, or in an inexpedient or improper

manner, by incurring the book debts which it presently owes, over and above its bonds and annuities, must appear totally groundless and absurd.

It further appears, that the Company's affairs are now in such a situation, that every one of these debts will be paid off in a very few months, and that the 40,000*l.* of additional dividend, voted to take place at Christmas next, will in no respect retard the payment of these debts; and that the Company will be further possessed, when the ships of this season shall have arrived, of effects equal to the payment of almost the whole of their bond debts, which, however, there is no intention nor no occasion to pay off.

But supposing the whole of the Company's book debts could not be so soon discharged, this can be no objection to the small additional dividend of 40,000*l.* considering the present flourishing state of the Company's affairs. The creditors to whom the book debts are owing are under no uneasiness, nor do they complain of the increase of dividend, which it is now allowed the Company are fully able to pay, and to continue that payment out of the profits of their trade alone.

Every merchant, when he regulates the sum to be bestowed by him upon his subsistence, or the annual expence of his family, considers, first, what is the total amount of his effects, compared with his debts; and secondly, what is the amount of his annual profits; and if he finds that he has a considerable fortune over and

above his debts, and that his annual profits are also considerable ; he freely resolves, and with great propriety, to bestow a share of his annual profits upon the support and expence of his family ; and it never can enter into his deliberation, in fixing what that annual expence shall be, whether or not at every particular period of the year, he is sure of having a balance of cash in his banker's hand ; because, if his total expence is properly regulated, so as not to exceed what he can really afford, he knows the goods he is possessed of, must always be able to command cash sufficient for his temporary occasions ; and indeed, if this rule were erroneous, there are many merchants in London possessed of fortunes to the amount of 150,000*l.* and their annual profits two or three thousands, who could not afford 50*l.* a year for their usual subsistence. If they were to be restricted in the manner now proposed for the India Company, they could not purchase a dinner and pay their debts ; their effects probably in America or the West Indies, in the way of trade, their returns uncertain, as to the particular time, and large debts due in England, as the price of cargoes sent abroad ; so that, upon the footing of their banker's book, after deducting all their debts due at home, they might be obliged to subsist upon air for several years together.

The credit of a public company is much superior to that of private merchants ; those to whom they owe the prices of goods, freights or other book debts, are much more ready to indulge them with delays of payment than the creditors

ditors of particular merchants. The India Company is under no embarrassment with respect to its creditors ; its only embarrassment is from the choice it has unhappily made of a set of Directors, who seem determined, if possible, to stab the credit of the Company, and to try to what degree of injuries and insults the patience of the Proprietors will tamely submit.

The Proprietors have resolved to apply to Parliament, by petition against a bill now depending, for rescinding the  $2\frac{1}{2}$  per cent. additional dividend, voted by the general court on the 6th of May last, in strict conformity to the powers granted by charter. The respect due to the Legislature restrains me from expressing my sentiments with regard to this retrospective law relating to private property and public credit. If any thing is interesting in this happy constitution, these points certainly are. The questions concerning general warrants, and dispensing powers, were, in respect of these, of very inferior importance. It is the duty of every British subject to submit with reverence and veneration, to whatever obtains the sanction of the three branches of the Legislature ; but when any particular bill appears, to be of dangerous consequence, we are entitled to hope and presume that it never will pass into a law.

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**State** of the East India Company's affairs with respect to the cash which will come into their treasury, and what must be issued from thence at different periods.

By

## Cr.

1767. Oct. 31. By  $\frac{1}{4}$  interest on the bonds and annuities, deducting what received from government, due at Michaelmas, ————— 12679  
Dec. 25. By  $\frac{1}{2}$  year's salaries, and other contingencies, ————— 5000

1768. Feb. 5. By  $\frac{1}{2}$  a year's dividend on the stock, at 12  $\frac{1}{2}$  per cent. per annum, ————— 199,630  
Balance of cash in favour of the Company in February 1768, ————— 544,485 13 4

By the above balance, —————  
By silk and drugs, &c. on the Dr. side, —————  
544,485 13 4  
170,000  
714,485 13 4

1768. March 25. Due to government, by agreement, the first payment —————  
May 1. By  $\frac{1}{2}$  a year's interest on the Bond and annuities, deducting what received from the government, due at Lady Day ————— 25,358  
June 29. By  $\frac{1}{2}$  year's salaries, and other contingencies, ————— 5000  
Aug. 5. By  $\frac{1}{2}$  a year's dividends, ————— 199,630  
By balance of cash in favour of the Company in August 1768 ————— 429,988

470,878  
900,866

[ 23 ]

When this account was produced to the general court by the accurate and intelligent Director who made it out, he declared that he had differed in the court of Directors from the opinion of the other Directors as to the 12  $\frac{1}{2}$  per cent. dividend, in which he had been joined by several other Directors, though a majority opposed this dividend, and he explained the above account in a very clear and satisfactory manner, and shewed, that in the preparing the account, he had made the most ample allowances of every kind, and declared himself ready to answer every objection which the other Directors could offer against it.—The other Directors fairly acknowledged that none of them had carried their calculations so far down as February 1768, when the dividend was to become payable.

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